IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 68 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REGIONAL DIRECTOR

Versus

RAMSHUBHAD RAMAVTAR

Appearance:

MR SR SHAH for Petitioner

MS ASHA H GUPTA for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/07/2000

ORAL JUDGEMENT

This appeal is filed by the Regional Director, Employees' State Insurance Corporation under Section 82 of the Employees' State Insurance Act, 1948 (to be referred to as 'the Act') challenging the judgment and

order dated April 14, 1980 passed by the Employees' Insurance Court, Ahmedabad in Application (ESI) No.118 of 1978. The respondent filed an application under Section 77 of the Act against the appellant claiming disablement benefits by way of compensation of Rs.2,000/- as temporary disablement compensation and claimed reference to the Medical Board for determination of the question of his permanent disablement and the cost of the application. The said application was numbered as Application (ESI) No.118 of 1978 in the Employees' Insurance Court at Ahmedabad. The respondent was an employee in Tarun Commercial Mill and was working as permanent operator in its Card Department. He was supposed to be on duty on July 3, 1976 in the day shift. While he was on his way to the Mill at about 6.50 a.m., he slipped on the road and sustained injury on his left knee. The other mill workers took the respondent to Shardaben Hospital and one of the worker Badaji Kanji gave intimation to the Mill Authorities about the accident and the injury sustained by the respondent. The Mill Authorities declined to fill in the accident report as the accident to the respondent was outside the Mill's premises. The case of the respondent was that he had sustained an employment injury and therefore, the Mill Authorities were liable to pay disablement compensation. As per the case of the respondent, the personal injury sustained by him on his left leg was during the course of his employment with the Mill as he was on his way to attend the day shift which was to begin at 7.00 a.m.

2. The appellant filed their written statement at Exh.8 inter alia contending that the accident did not happen during the course of employment and the respondent had sustained injuries while he was on his way to the Mill. It was stated that the Mill Authorities had reported on April 26, 1979 that there was no entry on record showing that the respondent had sustained injuries on July 3, 1976 during the course of his employment with the Mill. It was further stated that the respondent had sustained injuries outside the premises of the Mill and therefore it will not amount to employment injury, as defined under Section 2(a) and 51A of the Act. It was, therefore, contended that the respondent was not entitled to claim any benefit, as claimed in his application. However, it was stated that the respondent was paid the sickness benefit from July 3, 1976 to August 28, 1976 and therefore the claim application be dismissed with costs.

3. On the rival assertion of the parties, the Insurance Court framed issues at Exh.51. The respondent was examined at Exh.11. Dr. Mrs. Dharmila Gunvantlal

Shah, Resident Medical Doctor of Shardaben Hospital was examined at Exh.13. One Maniram Sabhapad who was also working in Tarun Commercial Mill in the Card Department was examined at Exh.16. No other evidence was led by the respondent or the appellant. The Employees' Insurance Court on appreciation of the evidence deduced that the respondent has sustained injuries while he was on his way to attend his employment with the Mill. The Court extended on the theory of notional extension of employment and allowed the application filed by the respondent by holding that the personal injury sustained by the respondent on his left leg was caused to him on July 3, 1976 due to employment injury. It was further held that the respondent was entitled to claim from the Mill Authorities TDB for the period he remained temporarily disabled. It was directed that the Mill Authorities shall refer the respondent to the Medical Board for determination of the question of permanent disablement caused to him by the employment injury and to pay to the respondent the permanent disablement benefit, if any, that may be determined by the Medical Board subject to the rights of the parties to appeal against the same, as per the provisions of the Act. The said order of the Employees' Insurance Court is challenged by the appellant in this appeal which is filed under Section 82 of the ESI Act.

4. Learned counsel for the appellant Mr. S.R. Shah has taken me through the entire records and proceedings produced in the Employees' Insurance Court and submitted that the theory of notional extension of employment cannot be applied in the facts of the present case as the respondent had sustained injuries outside the Mill premises and the injuries sustained by the respondent cannot be called employment injury, as per the provisions of the Act. Learned counsel for the appellant, therefore, submitted that as per the decision of the Supreme Court reported in AIR 1997 Supreme Court 432 in Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another, when an employee sustains injury on his way to factory, a place of employment and meets with accident away from the employment premises, the injury sustained by such employee cannot be said to be caused by accident arising out of and in the course of employment.

5. The submission of the learned counsel for the appellant that the respondent did not sustained injuries during the course of his employment and the theory of notional extension will not apply to the facts of the present case deserves to be accepted in view of the

decision of the Supreme Court in Francis De Costa's case (supra). The case before the Supreme Court was that the employee was on his way to attend factory and when he was 1 km away from the factory, he met with an accident. The Supreme Court ruled that if "employment" begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the door-step of his house, the accident will have to be treated as to have taken place during the course of his employment, then this interpretation leads to absurdity and has to be avoided. The Supreme Court, therefore, negated the theory of notional extension of employment which was granted to the employee by the courts below. In view of this pronouncement of the Supreme Court, the injury sustained by the respondent while he was on his way to the Mill cannot be called employment injury, as per the provisions of Section 2(a) of the Act. Consequently, the respondent will not be entitled to any disablement benefit as provided under Section 51 of the Act. In view of the settled legal principle of the Supreme Court in Francis De Costa's case supra, this appeal deserves to be allowed. The judgment and order of the Employees' Insurance Court is quashed and set aside. The appeal is allowed with no order as to costs.

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